

CHAPTER 5 ELECTIONS

621—5.1(20) General procedures.

5.1(1) Notice of election. Upon direction of an election, notices of election, in a form provided by the board, shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees. Such notices shall contain a sample ballot and shall set forth the date, time, place and purpose of the election, and such additional information as the board may deem appropriate.

5.1(2) Eligibility—eligibility list. Eligible voters are those employees who:

a. Were employed in the bargaining unit during the payroll period immediately preceding the direction of election unless another date is agreed upon by the parties and the board, and

b. Are employed in the bargaining unit on the date of the election. When the election is conducted in whole or in part by mail ballot or is conducted on more than one date, the date of the election shall be the date on which the ballots are to be counted. Where the board issues an order defining the appropriate bargaining unit and an election petition is pending, or in the case of a combined petition, the board shall further order the public employer to submit to the board within seven days an alphabetical list of the names, addresses and job classifications of the employees in the appropriate unit. Where such a list has previously been submitted to the board, it may be utilized under this rule; provided that additions or deletions of employees, changes in address or job classifications, or other changes shall be submitted to the board to reflect the current status of employees in the bargaining unit. The list required by this rule shall be provided by the board to all parties at least ten days prior to the date of the election and shall become the official voting list for any election conducted. The list may further be amended by agreement of the parties immediately prior to the election. In the case of a combined professional and non-professional unit, the public employer shall submit lists of employees in the professional category and employees in the nonprofessional category.

5.1(3) Mail ballots. The board may, in its discretion, conduct an election in whole or in part by mail ballot. In such cases, the board shall send by ordinary mail an official ballot and a postpaid return-addressed secret envelope to each eligible voter and direct a date by which voted ballots must be received by the board to be counted. The board shall also set a time and place for the counting of such ballots, at which time the parties to the election shall be entitled to be present and challenge for good cause the eligibility of any voter. Mail ballots sent to eligible voters shall consist of a ballot, a secret envelope in which said ballot is to be inserted, and an outer envelope for mailing said ballot and identification of voter for purposes of proposing challenges to the voter's eligibility. In the event of a challenge, both envelopes shall remain sealed until such time as the challenge is resolved. In the event of no challenge, the mailing envelope shall be opened and the envelope containing the secret ballot shall be deposited in the ballot box.

5.1(4) Time for intervention. No employee organization may be placed on any ballot unless application for intervention, as provided in 621—subrule 4.1(2), is received by the board within seven calendar days after the direction of an election. Submission of an adequate showing of interest, as provided in 621—subrule 4.3(2), must be received by the board within seven calendar days after the direction of the election, unless an extension of time, upon written request, is granted by the board.

5.1(5) Withdrawal from ballot. An employee organization may, upon its request, be removed from any ballot with the approval of the board.

621—5.2(20) Conduct of election.

5.2(1) General procedure—ballots. After consulting with the parties to an election the board shall determine the date, place, and other procedural aspects of conducting the election. Elections shall be conducted under the direction and supervision of the board or its election agent and shall be by secret ballot. Ballots shall be provided by the board and shall contain the question required by Iowa Code section 20.15. The question in an election where only one employee organization appears on the ballot

shall ask, “Do you wish to be represented for purposes of collective bargaining by [name of employee organization]?”, followed by the choices “Yes” or “No”; the question in an election where more than one employee organization appears on the ballot shall state: “Do you wish to be represented for purposes of collective bargaining by:” and shall then list horizontally or vertically thereafter the choices available, including the name of each employee organization and the choice of “Neither” or “No Representative”, as is applicable. In decertification elections, ballots shall be provided by the board and shall ask: “Do you desire that [name of certified employee organization] be decertified by the Public Employment Relations Board and cease to be your exclusive bargaining representative?”, followed by the choices “Yes” or “No”.

5.2(2) Observers. The parties to an election may each designate an equal number of representatives, not to exceed one per voting site, to act as its observers during the election and tally of ballots. Unless agreed to by the parties observers shall not be supervisory employees of the public employer.

5.2(3) Ballot box. Upon examination by the observers and prior to the opening of the polls, the election agent shall seal the ballot box so that entry thereto is limited to one slot. In the event that the election is continued for more than one polling period or at more than one polling place, the ballot box shall be sealed in its entirety and shall remain in the custody of the election agent until immediately prior to the next polling period or the counting of the ballots.

5.2(4) Voting procedure—challenges. An eligible voter shall cast the ballot by marking the voter’s choice(s) on the ballot and depositing it in the ballot box. If a voter inadvertently spoils a ballot, the ballot may be returned to the agent, who shall void and retain it and deliver to the voter another ballot. When a voter is unable to mark the ballot due to physical disability or inability to read or write, the agent may privately assist the voter.

An authorized observer or the board’s election agent may challenge for good cause the eligibility of any voter, provided such challenge is made prior to the time the voter casts the ballot. The challenged voter may mark the ballot in secret and the election agent shall segregate the ballot by causing it to be placed in the envelope with appropriate markings and deposited in the ballot box.

5.2(5) Absentee ballot. An absentee ballot shall be delivered to an eligible voter only upon the voter’s written notice to the board of the voter’s inability to be present at the election for good cause. The voted ballot must be in the possession of the election agent prior to the close of the manual election in order to be counted and shall be in the official envelope provided for this purpose. Challenges to the eligibility of absentee voters may be made at the time the ballots are commingled.

621—5.3(20) Election results—tally of ballots. At the close of the polls, or at time and place as the board may prescribe, the election agent shall open the ballot box and tabulate the results of the election. Void ballots shall be those which do not indicate the clear intent of the voter or which appear to identify the voter.

621—5.4(20) Postelection procedures.

5.4(1) Certification of results.

a. Upon completion of a valid representation certification election in which an employee organization received the votes of a majority of those employees voting, the board shall certify that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid representation certification election in which only one employee organization appeared on the ballot and that employee organization did not receive the votes of a majority of those voting, the board shall serve notice of noncertification.

c. Upon completion of a valid election in which more than one employee organization appeared on the ballot and no choice on the ballot received the votes of a majority of those employees voting, the board shall conduct a runoff election between the two choices receiving the greatest number of votes. If the runoff election is held less than 30 days after the original election, those eligible to vote shall be those who were eligible to vote in the original election and are still employed in the bargaining unit on the day of the runoff election. If the runoff election is held more than 30 days after the original election,

the board may direct the employer to submit a new eligibility list based upon a revised voter eligibility date.

d. Upon completion of a valid election, as provided for in paragraph “c” above, the board shall certify as the exclusive bargaining representative the employee organization receiving the votes of a majority of those employees voting; if no employee organization on the runoff ballot receives a majority of the votes of those employees voting, the board shall serve notice of noncertification.

e. If an employee organization fails to comply with the provisions of Iowa Code section 20.25 within 90 days of the completion of a valid election, the board shall serve notice of noncertification; provided, however, that extensions of time to comply may be granted by the board upon good cause shown.

f. Upon completion of a valid decertification election, in which a majority of employees voting cast their ballots in the affirmative, the board shall serve notice of decertification.

g. Upon completion of a valid decertification election, in which a majority of employees voting cast their ballots in the negative, or in the case of a tie, the board shall serve notice of continued certification.

5.4(2) *Challenged ballots; objections.* Whenever challenged ballots are determinative of the outcome of an election or timely objections are filed, a hearing shall be scheduled. Objections to an election must be filed within ten days of service of the tally of ballots on the parties, even when challenged ballots are determinative of the outcome of the election, and must contain a statement of facts upon which the objections are based. The objections shall be filed with the board and a copy shall be served upon each of the other parties to the election, with certificate of service endorsed upon the original filed with the board.

5.4(3) *Objectionable conduct during election campaigns.* The following types of activity, if conducted during the period beginning with the filing of an election petition with the board and ending at the conclusion of the election, and if determined by the board that such activity could have affected the results of the election, shall be considered to be objectionable conduct sufficient to invalidate the results of an election:

a. Electioneering within 300 feet or within sound of the polling place established by the board during the conduct of the election;

b. Misstatements of material facts by any party to the election or its representative without sufficient time for the adversely affected party to adequately respond;

c. Any misuse of board documents, including an indication that the board endorses any particular choice appearing on the ballot;

d. Campaign speeches to assembled groups of employees during working hours within the 24-hour period before the election;

e. Any polling of employees by a public employer which relates to the employees' preference for or against a bargaining representative;

f. Commission of a prohibited practice;

g. Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

621—5.5(20) Bars to an election. Notwithstanding the filing or pendency of an election petition, the board shall conduct no representation election when one or more of the following conditions exist:

5.5(1) During the one-year period following the date of certification or noncertification subsequent to a valid representation election.

5.5(2) In any case where the board determines that substantial changes in the employer's operations are occurring which will imminently and substantially alter the structure or scope of the bargaining unit.

5.5(3) Whenever a collective bargaining agreement exists, provided such agreement is written and executed by the parties to it; that such agreement is between a public employer and a certified em-

ployee organization; that such agreement does not discriminate among groups of employees on the basis of age, race, sex, religion, national origin or physical disability, as provided by law; and provided further, that any such agreement which exists for a duration in excess of two years shall be deemed for the purposes of this section to be for a duration of two years only. This contract bar shall not apply to a representation election in an amendment of unit case.

621—5.6(20) Decertification elections. Petitions for decertification which are filed with the board not less than 180 nor more than 240 days prior to the expiration of an otherwise valid collective bargaining agreement shall be processed by the board notwithstanding the provisions of 5.5(3), and the board shall, pursuant to Iowa Code section 20.15, conduct an election not more than 180 nor less than 150 days prior to the expiration of the collective bargaining agreement.

621—5.7(20) Disclaimer. Notwithstanding the provisions of rule 5.6(20), the board will process a valid decertification petition accompanied by an adequate show of interest as required by subrule 4.3(2) at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization wishes to disclaim representation of the employees in the certified bargaining unit.

a. Upon receipt of a disclaimer and a valid petition for decertification, the board shall serve copies of the disclaimer and petition upon the employer by certified mail. The board shall prepare a public notice of proposed decision that the employee organization will be decertified and cease to be the certified representative of the employees in the bargaining unit. The public employer shall post the notice of the proposed decertification for a period of not less than one calendar week in a prominent place in the main office of the public employer accessible to the general public and in conspicuous places customarily used for the posting of information to employees. The public employer shall also have copies of the proposed decertification available for distribution to the public upon request.

b. Notice of the proposed decertification shall be on a form provided by the board which shall identify the parties; specify that the employee organization seeks to disclaim representation; specify the unit currently represented by the employee organization; list the names, addresses, and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed; and state the date by which written objections to the proposed decertification must be filed with the board and the address to which the objections should be sent.

c. Objections to the proposed decertification must be filed with the board by the date posted in the notice. Objections shall be in writing and shall set out the specific grounds for objection. The objecting party must be identified and provide a mailing address and telephone number. The board shall promptly advise the parties of the objections. If the objections cannot be informally resolved, they shall be resolved at hearing or the board may direct and conduct a decertification election pursuant to rule 5.6(20).

d. If no objections have been filed, or if filed and the board has determined that the objections lack substance, the board shall order the decertification of the employee organization for the unit specified. If the employee organization is decertified pursuant to this rule, no representation election involving the same employee organization and the same unit may be conducted for a period of one year from the date of decertification.

621—5.8(20) Destruction of ballots. In the absence of litigation over the validity or outcome of an election and after a period of 60 days has elapsed from the date of the certification, decertification, or noncertification of an employee organization pursuant to a certification or decertification election, the board may destroy the ballots involved in such election.

These rules are intended to implement Iowa Code chapter 20. [Rules 5.2(20) and 5.4(20) implement Iowa Code section 20.15]

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